Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

ROBERT H. BARRETT,
Petitioner,

v.

BOROUGH OF CARLISLE,
Respondent.

On Petition For Writ Of Certiorari
To The Commonwealth Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Robert H. Barrett
Petitioner, *pro se*
136 East High Street
Carlisle, Pennsylvania 17013
(703) 524-5949 or (717) 243-0989

QUESTIONS PRESENTED

1. Whether property owners were deprived of rights to due process of law by the Pennsylvania Historical and Museum Commission in alleged historic certification proceedings, in violation of 42 U.S.C. § 1983?

Proposed Answer: In the Affirmative

2. Whether property owners were deprived of rights to just compensation by the Borough of Carlisle for regulating property within the Carlisle Historic District, absent valid historic certification, in violation of 42 U.S.C. § 1983?

Proposed Answer: In the Affirmative

3. Whether the Court of Common Pleas of Cumberland County, Pennsylvania deprived Petitioner of Fourth Amendment rights to be secure in his properties and papers against unreasonable searches, when it issued discovery orders against Petitioner's properties and papers, in violation of 42 U.S.C. § 1983?

Proposed Answer: In the Affirmative

4. Whether the Court of Common Pleas of Cumberland County, Pennsylvania deprived Petitioner of Fifth Amendment rights to due process of law, when it denied judicial review of condemnation orders against Petitioner's properties, in violation of 42 U.S.C. § 1983?

Proposed Answer: In the Affirmative

PARTIES TO PROCEEDING

In addition to the parties named in the caption, the Pennsylvania Historical and Museum Commission (a State agency) allegedly certified the Carlisle Historic District, thereby, establishing the basis for subsequent harm by Respondent, the Borough of Carlisle, and by the Court of Common Pleas of Cumberland County, Bayley, J.

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1. ORDER of the Supreme Court of Pennsylvania, Middle District at No. 637 M.D. Allocator Docket 2000, filed December 01, 2000, which denied Barrett's Petition for Allowance of Appeal (*See* Appendix A).

2. OPINION AND ORDER of the Commonwealth Court of Pennsylvania at No. 371 C.D. 2000, filed August 04, 2000, which affirmed the Order of the Court of Common Pleas (*See* Appendix B).

3. OPINION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(a) of the Court of Common Pleas of Cumberland County, Pennsylvania, Bayley, J., at No. 99-7461 Civil Term, dated March 01, 2000, which granted the Borough's motion to quash Barrett's appeal and allowed the Borough's Condemnation Orders to stand (*See* Appendix C).

4. ORDER OF COURT of the Court of Common Pleas of Cumberland County, Bayley, J., at No. 99-7461 Civil Term, dated January 13, 2000, which granted the Borough's motion to quash Barrett's appeal (*See* Appendix D).

5. ORDER OF COURT of the Court of Common Pleas at No. 98-4145 Equity Term, dated July 07, 1999, which committed Barrett to county prison for civil contempt of court (*See* Appendix F).

6. OPINION IN SUPPORT OF ORDER DATED JUNE 03, 1999 of the Court of Common Pleas at No. 98-4145 Equity Term, dated June 23, 1999, which directed Barrett to respond to the Borough's discovery requests (*See* Appendix H).

7. ORDER OF COURT of the Court of Common Pleas at No. 98-4145 Equity Term, dated June 03, 1999, which directed Barrett to respond to the Borough's discovery requests (*Incorporated in the court's opinion at* Appendix H).

JURISDICTION

On December 10, 1999, Petitioner filed an appeal of Condemnation Orders issued by Respondent in the Court of Common Pleas of Cumberland County, Pennsylvania at No. 99-7461 Civil Term. On January 13, 2000, the Court of Common Pleas granted Respondent's motion to quash the appeal.

On February 14, 2000, Petitioner filed an appeal in the Commonwealth Court of Pennsylvania at No. 371 C.D. 2000, which Court affirmed the Court of Common Pleas order quashing Petitioner's appeal on August 04, 2000.

On September 01, 2000, Petitioner filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, Middle District at No. 637 M.D. Allocator Docket 2000, which Court denied the Petition on December 01, 2000.

The United States Supreme Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional and statutory provisions, which are set out in Appendix I:

1. The Fourth Amendment to the United States Constitution.

2. The Fifth Amendment to the United States Constitution.

3. The Fourteenth Amendment to the United States Constitution.

4. 28 U.S.C. § 1257(a)

5. 42 U.S.C. § 1983

6. 2 Pa.C.S. § 752

STATEMENT OF THE CASE

This is the third of five (5) related cases working through State and Federal Courts to the Supreme Court of the United States for writ of certiorari. The first case was docketed at No. 00-977. The second case will be filed on February 12, 2001, and the case number is not known as of this writing. These cases involve the **unlawful** efforts of a State agency, a local government, and a judge of the Court of Common Pleas to establish and to regulate the Carlisle Historic Preservation District (herein, "the Historic District"), and to take possession of and to sell the property of Petitioner, Robert H. Barrett (herein, "Barrett"), for refusing to comply with the **unlawful** regulation of the Historic District. Barrett has owned property in the area designated as the Historic District for over thirty (30) years, and before the alleged certification of the District. These cases include the following 42 U.S.C. § 1983 violations of Barrett's rights guaranteed under the United States Constitution.

(1) The Pennsylvania Historical and Museum Commission (herein, "the State Commission") deprived property owners of substantive and procedural due process of law under the Fifth and Fourteenth Amendments, during alleged historic certification proceedings for the Historic District.

(2) Respondent, the Borough of Carlisle (herein, "the Borough"), deprived property owners of just compensation for the regulatory taking of property rights under the Fifth and Fourteenth Amendments, by regulating property within the Historic District, absent valid historic certification. In addition, the Borough abused its police powers (1) by falsely

claiming property maintenance violations in the absence of public fire, safety or health hazards, (2) by condemning property without valid cause, and (3) by attempting to physically seize property in an effort to unlawfully regulate property within the Historic District.

(3) The Court of Common Pleas of Cumberland County, Pennsylvania, Bayley, J., (herein, "the Trial Court"), has colluded with the Borough to "save the Historic District," (1) by fining Barrett for property maintenance violations in the absence of public fire, safety or health hazards, (2) by denying Barrett Fifth and Fourteenth Amendment rights to due process of law and just compensation for the regulatory taking of property rights in denying a demolition permit, (3) by denying Barrett Fourth Amendment rights to be free of unreasonable searches of his properties and papers under discovery proceedings, (4) by denying Barrett Fifth and Fourteenth Amendment rights in denying judicial review of Borough condemnation orders, and (5) by denying Barrett Fifth and Fourteenth Amendment rights in entering a default judgment to take possession of and to sell Barrett's properties.

In each of these cases, Barrett avers that the State Commission failed to afford property owners substantive and procedural due process of law during alleged historic certification proceedings for the proposed Historic District. Barrett avers that the Historic District is, thereby, Constitutionally flawed and cannot be regulated under State law. The Borough subsequently regulated property within the Historic District in the absence of valid historic certification. Although the Borough has alleged that the Historic District was certified by the State Commission,

there is no factual evidence that the State Commission ever conducted certification proceedings or officially certified the Historic District. If the State Commission, in fact, conducted any kind of certification proceedings, property owners were denied procedural and substantive due process of law during those proceedings, were unaware that an historic district had been proposed which included their properties, and were unaware of the potential regulatory taking of their property rights. Barrett avers that regulation of property within the Historic District, absent valid historic certification, constitutes an unlawful regulatory taking of property rights under the Fifth and Fourteenth Amendments to the United States Constitution. Barrett also avers that property owners are entitled to just compensation for the taking of their property rights when the historical or architectural importance of their property has not been established.

Barrett has repeatedly refused to comply with the Borough's Historic District regulations and to submit to historic board reviews, and as a consequence, the Borough has issued false property maintenance citations against his properties in the absence of public fire, safety or health hazards, unlawfully condemned his properties without valid cause, denied him demolition and building permits, and attempted to seize his properties. The Trial Court has colluded with the Borough in this effort by denying judicial review of the alleged certification of the Historic District, by ordering Barrett to submit to warrantless searches, without probable cause, of his properties and papers under discovery proceedings, by denying judicial review of the Borough's condemnation orders, and by entering a default judgment against Barrett to take possession of and to sell his properties,

in violation of Barrett's Fourth, Fifth, and Fourteenth Amendment rights under the United States Constitution.

On July 09, 1998, Barrett filed a complaint in the United States District Court for the Middle District of Pennsylvania challenging the validity of the Historic District. The case is presently pending before the Supreme Court of the United States at No. 00-977. In that case, the Federal District Court dismissed Barrett's complaint based on alleged *res judicata* of the issue in State Courts. Barrett avers that the conditions of *res judicata* were not met as is clear from the significant difference in relief requested in the State and Federal complaints. Only in the Federal complaint did Barrett request the court overturn the Historic District. Barrett further avers that the State Courts dismissed his appeal based on an incorrect interpretation of the decision of the United States Supreme Court in Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978). The State Courts incorrectly interpreted Penn Central - to mean that historic designation is **never** a Fifth Amendment taking, even when property owners were denied procedural and substantive due process of law in historic certification proceedings. Under the State's interpretation of Penn Central, the State Commission may certify, and local government may regulate, any property under the guise of historic preservation without notification of the property owner or other rights of due process.

The second case which Barrett is appealing to the Supreme Court of the United States began on July 22, 1998, just two (2) weeks after Barrett filed suit in Federal District Court to overturn the Historic District. In the second case, the Borough, in retaliation for Barrett's Federal challenge,

filed an **Equity** action in State Court to have an agent appointed to take possession of and to sell Barrett's properties. The Trial Court denied Barrett Fourth Amendment rights by ordering Barrett under discovery proceedings to allow the Borough to conduct warrantless searches, without probable cause, of each of Barrett's eight (8) improved properties and of Barrett's papers. (*See* Appendix G and H) Barrett filed a complaint against the discovery order with the Federal District Court which dismissed the complaint for lack of jurisdiction. Barrett then appealed the discovery order to the Commonwealth Court of Pennsylvania which quashed the appeal as interlocutory.

When Barrett refused to allow the warrantless searches of his properties and papers, the Trial Court twice committed him to indefinite incarceration in county prison for civil contempt of court. In the first instance, Barrett was committed for refusing to allow the Borough to conduct warrantless searches of his improved properties. (*See* Appendix F) After forty-one (41) days imprisonment, under lock-down conditions, Barrett agreed under duress to allow the searches in order to return to his family and in order not to lose his position with the Federal government.

In the second instance, Barrett was again committed indefinitely to county prison, under lock-down conditions, for refusing to allow warrantless searches of his papers and for refusing to answer interrogatories concerning his financial status. While in prison, Barrett was forced to retire from his Federal position in order to maintain his financial obligations through a retirement annuity. After forty (40) days, Barrett was released under threat that the Trial Court would enter a default judgment against him if he failed to provide the

requested documents and financial information. On January 14, 2000 (subsequently amended on January 24, 2000), the Trial Court further violated Barrett's Fifth and Fourteenth Amendment rights by entering a default judgment against Barrett in which an agent was appointed to take possession of and to sell Barrett's eight (8) improved properties for refusing to allow the warrantless searches of his papers and for refusing to comply with Historic District regulations. In the State equity action, the combined market value of Barrett's properties, equipment, tools, and personal possessions to be seized by the Trial Court is in excess of $1,000,000 dollars. In the absence of any factual evidence and absent any showing of harm by the Borough, the action of the Trial Court constitutes abuse of authority and outright theft.

In this, the third and immediate action before the Supreme Court of the United States, the Borough condemned six (6) of Barrett's properties based allegedly on information obtained from the warrantless searches of his properties conducted under the discovery order of the Trial Court in the equity action described above. Of the six (6) properties condemned, only one warranted condemnation. Since **February 1996**, Barrett has attempted to obtain a demolition permit for the building at 134-136-138 East High Street, Carlisle, but been repeatedly denied a permit by the Borough. While denying Barrett a demolition permit, the Borough repeatedly cited Barrett for the condition of 138 East High Street. The secondary relief requested in the case before the United States Supreme Court at No. 00-977 is a demolition permit for this building. None of the other five (5) condemnations is based on the condemnation criteria of the Carlisle Property Maintenance Code and are, in fact, arbitrary and capricious.

In the immediate action Barrett appealed the Borough's Condemnation Orders to the Trial Court (*See* Appendix E), which quashed Barrett's appeal for lack of jurisdiction. The Trial Court claimed that it "had no jurisdiction to hear appeals directly from the four orders issued by the Borough code enforcement officer on October 26, 1999, as that officer is not a Local Agency." (*See* Appendix C and D)

The Commonwealth Court of Pennsylvania subsequently affirmed the order of the Trial Court and denied Barrett's appeal. (*See* Appendix B)

Barrett filed a Petition for Allowance of Appeal with the Pennsylvania Supreme Court which entered an order denying the petition on December 01, 2000. (*See* Appendix A)

REASONS FOR GRANTING THE WRIT

Introduction.

Within the Commonwealth of Pennsylvania, the designation of "historic districts" has evolved into a scheme by which local governments take control of tens of thousands of properties under the **pretense** of preserving historically or architecturally important properties. With few exceptions, such as Philadelphia's Independence Hall, most Pennsylvania historic districts contain little or nothing of true historical or architectural importance. Most historic districts are typically composed of downtown areas or older areas where local governments want to increase the tax base. In fact, there is no lawful basis for most Pennsylvania historic districts.

Local governments regulate historic districts in a manner similar to homeowners' associations. Historic boards are appointed to dictate the simple appearance of property and whose approval is required for any repair or change to the exterior of property. However, a significant difference between homeowners' associations and government regulation of historic districts is that home owners agree as a condition of sale to be contractually bound by the decisions of the homeowners' association. In most historic districts, property owners were never given a choice in the matter.

Barrett owned property in the area designated as the Historic District for over thirty (30) years, and before the alleged certification of the District. Like most property owners within the Historic District, Barrett first learned of the establishment of the Historic District years after the alleged historic certification. Following the alleged historic certification by the State Commission, all exterior property

rights within a thirteen (13) block area which included over a thousand (1,000) properties were secretly taken by the Borough. Although Barrett has attempted to obtain documented evidence of the alleged certification of the Historic District, neither the State Commission nor the Borough has ever provided such evidence, and the Trial Court has twice denied subpoenas to obtain records of the alleged certification.

Further compounding the issue is the absence of a rational basis for historic district boundaries or for the sweeping inclusion in an historic district of adjacent or nearby properties to an "Independence Hall." In the Historic District, at issue in this case, there is no evidentiary basis for its boundaries or for inclusion of any specific properties as being of truly historical or architectural importance to justify the wholesale regulatory taking of property rights which has occurred in violation of the Fifth and Fourteenth Amendments to the United States Constitution. The Borough has embarked on a campaign to "save the Historic District" at any cost, including false prosecution of any property owner who dares to challenge their authority to regulate the district.

I. **Pennsylvania State Courts incorrectly interpreted the decision of the United States Supreme Court in Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978) to deny that historic certification constitutes a Fifth Amendment "taking" when property owners are denied procedural and substantive due process of law before the certifying authority in historic certification proceedings.**

In Penn Central the property owners were the Penn Central Transportation Co., et al., and the property at issue was Grand Central Terminal in New York City. In Penn Central, the United States Supreme Court held:

> "On this record, we conclude that the application of New York City's Landmarks Law has not effected a 'taking' of appellants' property. The restrictions imposed are substantially related to the promotion of the general welfare, and not only permit reasonable beneficial use of the landmark site, but also afford appellants opportunities further to enhance not only the Terminal site proper but also other properties."

Pennsylvania State Courts have ignored the case specific conditions inherent in this decision and mistakenly concluded that historic certification is **never** a Fifth Amendment "taking. Pennsylvania State Courts subsequently concluded that property owners do not have a right (1) to procedural and substantive due process of law before the certifying authority during historic certification proceedings, and (2) to subsequent judicial review of historic certification.

The Pennsylvania State Courts ignored the following essential conditions of Penn Central:

(1) Property owners in Penn Central were afforded due process of law because they were notified in advance that the New York City Landmarks Preservation Commission proposed to certify Grand Central Terminal as a landmark site and were provided an opportunity to review and to challenge the criteria and evidence supporting such

certification.

(2) Although the owners opposed the certification before the New York City Landmarks Preservation Commission, they did not seek judicial review of the final certification. The owners thereby let stand the assumption that sufficient evidence existed to support the landmark certification.

In contrast, the Pennsylvania State Courts improperly denied that historic certification and regulation of the Carlisle Historic District constituted a Fifth Amendment "taking," even though property owners were denied procedural and substantive due process of law during historic certification proceedings before the State certifying authority.

In fact, a complete and accurate reading of Penn Central establishes that historic certification must be based on a Constitutionally valid certification process which (1) affords property owners due process of law before the certifying authority and (2) establishes a valid historical or architectural basis for certification. Only after the property owner has been afforded due process before the certifying authority, and after a valid basis has been established for the historical or architectural importance of the proposed property, can a property be certified as historic. Penn Central does not eliminate the requirement that property owners must be afforded due process of law in historic certification proceedings before the certifying authority.

Where property owners are denied substantive and procedural due process of law in historic certification proceedings, the conclusions of those proceedings are Constitutionally defective and cannot serve as a basis for

regulating property and the taking of property rights. Absent the opportunity for property owners to review historic certification criteria, to review evidence supporting the historical or architectural importance of proposed property, and to challenge historic certification, the historic certification process violates the substantive and procedural due process protections of the Fifth and Fourteenth Amendments and constitutes an unconstitutional, regulatory "taking" of property rights.

II. Pennsylvania State Courts denied judicial review of historic certification proceedings, including final historic certification.

Pennsylvania State Courts refused to review the historic certification of the Carlisle Historic District, and the subsequent "taking" of property rights through property regulation. Ignoring the fact that property owners were denied due process of law and never notified of the proposed certification, or afforded an opportunity to review certification criteria, or to review any substantial supporting evidence, or to file objections to the proposed designation or to seek judicial review of final historic certification, Pennsylvania State Courts claimed that the time for reviewing the historic certification was within thirty (30) days of the certification. The Pennsylvania State Courts completely ignored the fact that property owners were never afforded substantive and procedural due process of law, and that most property owners never knew of the historic certification until years later.

It is a well-settled matter of law that a statute of limitations cannot begin to run until the claim itself accrues.

A cause of action does not accrue until a wrongful act causes injury to the party. The United States Supreme Court has repeatedly held, as it did in 1980, that a Fifth Amendment claim for just compensation is not "ripe," and therefore cannot be adjudicated, until a regulation has been specifically applied to the property and has caused specific harm, Gains v. City of Tiburon, 447 U.S. 255 (1980). In the present case, the claims under the due process and "takings" protections of the Fifth Amendment did not become "ripe" until the Borough of Carlisle refused to issue Barrett permits based on Historic District regulations.

In denying judicial review of the alleged historic certification, Pennsylvania State Courts improperly denied Barrett's right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution.

III. **The Court of Common Pleas of Cumberland County violated Petitioner's rights under the Fourth Amendment when it issued a discovery order allowing warrantless searches, without probable cause, against Petitioner's properties and papers.**

The Fourth Amendment to the United States Constitution states:

> "The right of the people to be secure in their houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

At issue is whether court-ordered discovery through

administrative "inspections," production of documents, and disclosure of financial information through interrogatories constitute searches within the meaning of the Fourth Amendment to the United States Constitution? Barrett argues that such "inspections" and demands for information are, in fact, searches under the Fourth Amendment and are subject to the warrant procedures of the Fourth Amendment.

On June 01, 1999, the Trial Court heard on-record argument on the Borough's motion to compel compliance with their discovery requests, including the Borough's request for entry upon Barrett's properties. At that hearing, the Borough presented no statement of facts or evidence against Barrett's properties to establish probable cause for general entry upon all eight (8) of Barrett's improved properties. Further, the Borough presented no argument for entry upon any individual property owned by Barrett and established no probable cause for such action. And, the Borough presented no argument for entry upon Barrett's personal residence at 136 East High Street and established no probable cause for such action. The Borough did not establish probable cause for searching Barrett's properties, and the Trial Court did not issue Warrants. (*See* Appendix G and H)

On June 14, 1999, Barrett filed a complaint in the United States District Court for the Middle District of Pennsylvania at Civil No. 1:CV-99-997. In the Federal complaint, Barrett averred that the inspections ordered by the Trial Court constituted "searches" under the Fourth Amendment to the United States Constitution, were ordered without probable cause, and violated his right to be secure in his property against unreasonable searches. Barrett requested

the U.S. District Court vacate the June 03, 1999 discovery order of the Trial Court. On June 27, 1999, the U.S. District Court dismissed the complaint for lack of jurisdiction.

On June 21, 1999, Barrett filed a Notice of Appeal to the Pennsylvania Commonwealth Court of the June 03, 1999 discovery order of the Trial Court. Barrett averred that his appeal was an Interlocutory Appeal as of Right made under Pa.R.A.P. 313, Collateral Orders. On July 19, 1999, the Commonwealth Court of Pennsylvania quashed Barrett's appeal on grounds that it was interlocutory and not otherwise appealable.

Barrett was subsequently incarcerated in the Cumberland County Prison, under lock-down conditions, for forty-one (41) days for refusing to allow the searches. Only after Barrett agreed, under duress, to the searches was he released from prison.

Barrett was again incarcerated, under lock-down conditions, for another forty (40) days for refusing to allow warrantless searches of his papers and for refusing to answer interrogatories about his financial status.

Courts are not exempt from the provisions of the Fourth Amendment to the United States Constitution. Nor are discovery actions in lawsuits, especially equity lawsuits, exempt from the provisions of the Fourth Amendment to the United States Constitution. Constitutionally protected areas, including property, papers, and effects, are subject to the protections guaranteed under the Fourth Amendment to the United States Constitution. Judicial discretion does not include the right to violate Constitutional protections. Barrett avers that the discovery "inspections" ordered by the Trial

Court constituted "searches" subject to Fourth Amendment protections, which required a finding of probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The Trial Court failed to establish probable cause for searches of Barrett's properties and papers, and failed to issue warrants, thereby, violating Barrett's right to be secure in his property and papers against unreasonable searches. As a consequence, Barrett's refusal to submit to violations of his Constitutional rights by the Trial Court does not establish a basis for civil contempt of court and his subsequent imprisonment.

IV. **The Court of Common Pleas of Cumberland County violated Petitioner's rights under the Fifth and Fourteenth Amendments when it denied judicial review of condemnation orders against Petitioner's properties.**

2 Pa.C.S. § 752 provides that:

> Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure.).

The period for appeal under 2 Pa.C.S. § 752 is within thirty (30) days after entry of the order from which the appeal is taken. Because the Borough did not challenge the timeliness of the appeal before the Trial Court, the issue could not be raised before the Commonwealth Court of Pennsylvania. Thus, the Commonwealth Court erred in finding that Barrett's

appeal to the Trial Court was untimely filed. In fact, Barrett's appeal was timely filed on November 21, 1999 to the Cumberland County Prothonotary's Office. At the time of filing, Barrett was incarcerated in the county prison for civil contempt of court. The Prothonotary's Office spuriously returned the original filing on November 29, 1999 because it had no case number. It is the Prothonotary's Office which assigns the case number.

Although the Code of the Borough of Carlisle, allows for an appeal of a condemnation order to an administrative Board of Appeals, this is an optional, administrative avenue of redress. As a body appointed by the Borough, the Board of Appeals is not an independent, judicial body and does not fulfill the right to judicial review set forth in 2 Pa.C.S. § 752. The thirty (30) day right to judicial review under 2 Pa.C.S. § 752 cannot be reduced to a ten (10) day right to administrative review by the Board of Appeals.

Further, under the doctrine of exhaustion of administrative remedies, one must exhaust all available administrative remedies before the right to judicial review arises. Following a local agency decision from which an appeal can be taken, there is a ten (10) day window for an administrative appeal to the Board of Appeals. Although it may be argued that the condemnation orders issued by the Borough Code Department were not initially final orders of the agency, following the ten (10) day period in which an appeal can be made to the Board of Appeals, the orders of the Borough Code Department, in fact, become final orders of the agency. At the close of the ten (10) day window, all administrative remedies are exhausted, and at that time the condemnation orders become appealable to the court.

Barrett's appeal to the Trial Court was clearly filed after the ten (10) day administrative appeal window had closed, but within the remaining twenty (20) days for filing a judicial appeal.

The Borough Code Department has authority to issue both property maintenance citations and condemnation orders under the Carlisle Property Maintenance Code. The Trial Court accepts appeals for *de novo* review and adjudication of property maintenance citations issued by the Borough Code Department. Thus, for property maintenance citations, the Trial Court has recognized the Borough Code Department as a Local Agency under 2 Pa.C.S. § 752. Because the Trial Court recognizes the Borough Code Department as a Local Agency for purposes of property maintenance citations, the Borough Code Department must also be a Local Agency for purposes of condemnation orders. Thus, both property maintenance citations and condemnation orders issued by the Borough Code Department are appealable to the Trial Court for *de novo* review.

In its opinion dated March 01, 2000, the Trial Court stated: "Each property was condemned because of multiple continuing BOCA Code violations." In fact, four (4) of the eight (8) improved properties which the Borough searched had never been found guilty of <u>any</u> BOCA Code violation during Barrett's ownership. The Borough and the Trial Court have repeatedly made sweeping generalizations about Barrett's properties based on the condition of the property at 138 East High Street. Since **February 1996**, Barrett has repeatedly attempted to obtain a demolition permit for the building at 134-136-138 East High Street, Carlisle, but been denied a permit by the Borough. While denying Barrett a

demolition permit, the Borough repeatedly cited Barrett for the condition of 138 East High Street, while refusing to issue Barrett a demolition permit to remove the building.

The Trial Court in the immediate action and in related cases before it has taken the following actions:

(1) Colluded with the Borough to fine Barrett for the simple appearance of his properties in the absence of public fire, safety or health hazards;

(2) Twice denied Barrett a subpoena against the State Commission to produce its records of the alleged certification of the Historic District;

(3) Incorrectly interpreted Penn Central Transportation Company v. New York City to deny property owners their right to due process of law before the historic certifying authority;

(4) Incorrectly interpreted Penn Central Transportation Company v. New York City to deny property owners their right to just compensation for the regulatory taking of their property rights in the absence of valid historic certification;

(5) Denied review of the Historic District certification based on expiration of the statute of limitations in violation of Gains v. City of Tiburon;

(6) Violated Barrett's Fourth Amendment rights by ordering warrantless searches, without probable cause, of his properties and papers;

(7) Violated Barrett's Fifth Amendment rights to due process of law by refusing to review the

Borough's condemnation orders against Barrett's properties; and

(8) Violated Barrett's Fifth Amendment rights by appointing an agent to take possession of and to sell his properties.

CONCLUSION

This case raises constitutional issues involving the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and the decision of the United States Supreme Court in Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978). These issues have been decided by the State Courts in a way probably not in accord with applicable decisions of the Supreme Court of the United States.

For the reasons set out, Petitioner prays that this petition for writ of certiorari be granted.

Respectfully submitted,

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(703) 524-5949 or (717) 243-0989

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 637 M.D. Alloc. Dkt. 2000

Petition for Allowance of Appeal from Commonwealth Court

ROBERT H. BARRETT,
Petitioner

v.

BOROUGH OF CARLISLE,
Respondent

(Filed December 01, 2000

ORDER

PER CURIAM

AND NOW, this 28th day of November, 2000, the petition for allowance of appeal is denied.

APPENDIX B

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 371 C.D. 2000
SUBMITTED: May 12, 2000

ROBERT H. BARRETT,
Appellant

v.

BOROUGH OF CARLISLE

BEFORE: HONORABLE DORIS A SMITH, Judge
HONORABLE BONNIE BRIGANCE LEADBETTER, Judge
HONORABLE WILLIAM J. LEDERER, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
SENIOR JUDGE LEDERER

FILED: August 04, 2000

The issue presented is whether the Court of Common Pleas of Cumberland County (trial court) erred by holding that it did not have jurisdiction to hear the appeal of Robert H. Barrett (Appellant) from four orders issued by the Code Department of the Borough of Carlisle (Code Department). We hold that by not filing an appeal with the Board of

Appeals of the Borough of Carlisle (Board of Appeals), Appellant did not exhaust his administrative remedies. Therefore, the trial court did not have jurisdiction to hear the appeal. Thus, we affirm the order of the trial court.

The relevant facts of this case are as follows. On October 16, 1999, the Code Department, pursuant to the Borough Property Maintenance Code, condemned four properties in the Borough of Carlisle owned by Appellant. The orders were sent by one certified mailing, return receipt requested, to Appellant at the Cumberland County Prison where he was incarcerated. Prison authorities signed for this mailing on October 28, 1999. Each order advised Appellant that he had a right of appeal within ten (10) days to the Board of Appeals. On December 13, 1999, Appellant filed with the Cumberland County Prothonotary a "Local Agency Law Appeal" to challenge the four orders. The Borough of Carlisle filed a motion to quash the appeal which was granted by the trial court by order dated January 13, 2000. Appellant has appealed that order to this Court.

On appeal,[1] Appellant, pro se, argues that the trial court erred in holding that it does not have jurisdiction to hear appeals from condemnation orders issued by the Code Department. Appellant also argues the underlying merits of his appeal. Since we hold that the trial court correctly decided that it did not have jurisdiction to hear this appeal,

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[1] Appellate review of a trial court's order granting a motion to quash and dismissing for a lack of jurisdiction is limited to a determination of whether the trial court abused its discretion or committed an error of law. Fraternal Order of Police, White Rose Lodge No. 15 v. City of York, 708 A.2d 855 (Pa. Cmwlth. 1998).

we will not address the underlying merits of the case.

Under the doctrine of exhaustion of administrative remedies, one must exhaust all available administrative remedies before the right to judicial review arises. Campbell v. Department of Labor and Industry, 471 A.2d 1331 (Pa. Cmwlth. 1984). The condemnation orders issued by the Code Department on October 26, 1999 informed Appellant that he had the right to appeal the determination with the Board of Appeals within ten (10) days.[2] Appellant never filed an appeal with the Board of Appeals. Instead, on December 13, 1999, Appellant filed an appeal with the trial court.[3] Since Appellant did not exhaust his administrative

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[2] Chapter 5 Section 5.7 of the Code of the Borough of Carlisle, provides:

> Any person aggrieved by a decision of any borough official or body who or which is responsible for the enforcement of the code or ordinances which are the subject of this chapter shall file a written notice of appeal with the Board of Appeals within ten (10) days after the rendering of such decision. The Board of Appeals is a local agency ordained by the Borough of Carlisle to hear appeals of the Borough determinations and to hold hearings under Pennsylvania Local Agency Law 2 Pa. C.S. Section 101 et seq.

[3] Appellant did not even file his appeal within the thirty (30) days as set forth in Section 5571(B) of the Pennsylvania Judicial Code. 42 Pa. C.S. §5571(B) provides:

> (B) Other courts.--Except as provided in subsections (a) and (c) [not applicable here], an appeal from a tribunal or other governmental unit to court or from a court to an appellate court must be commenced within 30 days after the entry of the order from which the appeal is taken, in the case of an interlocutory or final order. 42 Pa. C.S. §5571(B).

remedies or file a timely appeal, the trial court correctly held that it did not have jurisdiction to hear the appeal.

Accordingly, the order of the trial court is affirmed.

WILLIAM J. LEDERER, Senior Judge

Judge Leadbetter concurs in the result only.

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

No. 371 C.D. 2000

ROBERT H. BARRETT,

Appellant

v.

BOROUGH OF CARLISLE

ORDER

AND NOW, this 4th day of August, 2000, the order of the Court of Common Pleas of Cumberland County in the above-captioned matter is hereby affirmed.

WILLIAM J. LEDERER, Senior Judge

APPENDIX C

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 99-7461 Civil Term

ROBERT H. BARRETT,
Appellant

v.

BOROUGH OF CARLISLE,
Appellee

IN RE: OPINION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(a)

Bayley, J., March 1, 2000:--

On October 26, 1999, the Code Department of the Borough of Carlisle, pursuant to Section PM-108.0 of the Borough Property Maintenance Code, condemned four properties in the Borough owned by Robert H. Barrett: 29 South East Street, 35 South Bedford Street, 37 South Bedford Street and 136 East High Street. Each property was condemned because of multiple continuing BOCA Code violations. Each order advised Barrett that he had a right of appeal within ten days to the Board of Appeals of the Borough of Carlisle. Notwithstanding, on December 13, 1999, Barrett filed the within "Local Agency Law Appeal" in this court from the four orders of the code enforcement officer.

The Borough of Carlisle filed a motion to quash the appeal. An order was entered on January 13, 2000, quashing the appeal, with the following statement:

> Any appeal by Robert H. Barrett of the four orders issued by the Codes Department of the Borough of Carlisle was to the Board of Appeals of the Borough of Carlisle, not this court. The procedure is no different than if a Borough Zoning Officer had issued an order from which an appeal would be to the Zoning Hearing Board of the Borough of Carlisle. It is the decisions of the Board of Appeals or a Zoning Hearing Board that are appealable to a Court of Common Pleas.

Barrett filed a direct appeal to the Commonwealth Court of Pennsylvania from that order. Chapter 5 Section 5.7 of the Code of the Borough of Carlisle, provides:

> Any person aggrieved by a decision of any borough official or body who or which is responsible for the enforcement of the code or ordinances which are the subject of this chapter shall file a written notice of appeal with the Board of Appeals within ten (10) days after the rendering of such decision. The Board of Appeals is a local agency ordained by the Borough of Carlisle to hear appeals of Borough determinations and to hold hearings under the Pennsylvania Local Agency Law 2 Pa. C.S. Section 101 **et seq.**

The legislature has provided at 2 Pa. C.S. Section 752:

> Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or

pursuant to Title 42 (relating to judiciary and judicial procedure.).

The definition of "Local agency" at 2 Pa.C.S. Section 101 is "A government agency other than a Commonwealth agency." The Common Pleas Court is vested with jurisdiction of appeals from final orders of local administrative agencies by the Judicial Code at 42 Pa.C.S. Section 933(a)(2). **Airo Die Casting, Inc. v. Westmoreland County Board of Assessment Appeals**, 706 A.2d 1279 (Pa. Commw. 1998).

In the case **sub judice**, it is a direct appeal from an order of a Local Agency, the Board of Appeals of the Borough of Carlisle, that lies in this court. We have no jurisdiction to hear appeals directly from the four orders issued by the Borough code enforcement officer on October 26, 1999, as that officer is not a Local Agency.

March 1, 2000
(DATE)

Edgar B. Bayley, J.

APPENDIX D

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 99-7461 Civil Term

ROBERT H. BARRETT,
Appellant

v.

BOROUGH OF CARLISLE,
Appellee

ORDER OF COURT

AND NOW, this 13th day of January, 2000, the motion of the Borough of Carlisle to quash the within appeal, **IS GRANTED.**[1]

By the Court,

_____
Edgar B. Bayley, J.

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[1] Any appeal by Robert H. Barrett of the four orders issued by the Codes Department of the Borough of Carlisle was to the Board of Appeals of the Borough of Carlisle, not this court. The procedure is no different than if a Borough Zoning Officer had issued an order from which an appeal would be to the Zoning Hearing Board of the Borough of Carlisle. It is the decisions of the Board of Appeals or a Zoning Hearing Board that are appealable to a Court of Common Pleas.

APPENDIX E

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 99-7461 Civil Term

ROBERT H. BARRETT,
Appellant

v.

BOROUGH OF CARLISLE,
Appellee

LOCAL AGENCY LAW APPEAL

AND NOW, comes Robert H. Barrett, a *pro se* litigant, and files this Local Agency Law Appeal and, in support thereof, asserts the following:

1. Appellant, Robert H. Barrett (herein, "Barrett"), is an adult resident of Cumberland County, Pennsylvania, residing at 136 East High Street, Carlisle.

2. Appellee, the Borough of Carlisle (herein, "the Borough"), is a subdivision of the Commonwealth of Pennsylvania.

3. Barrett is the owner of real estate situate in the Borough of Carlisle, Cumberland County, Pennsylvania, being parcels of real estate designated 29 South East Street, 35 South Bedford Street, 37 South Bedford Street, and 136 East High Street.

4. The property at 136 East High Street is Barrett's personal residence.

5. On October 26, 1999, the Borough issued condemnation orders against the four (4) properties listed above as unfit for human occupancy. (Copies of the condemnation orders are attached as Exhibits A, B, C, and D.)

6. Barrett believes and, therefore, avers that his properties do not warrant condemnation under the Carlisle Property Maintenance Code for the following reasons:

A. None of the four (4) properties is an unsafe structure where partial or complete collapse is likely;

B. None of the four (4) properties is unsanitary, vermin or rat infested, contains filth and contamination, or lacks ventilation, sanitary or heating facilities or other essential equipment required by the code; and

C. None of the four (4) properties is an unlawful structure.

7. Barrett further believes and, therefore. avers that the Borough applied the condemnation criteria of the Carlisle Property Maintenance Code to his property in an arbitrary and capricious manner, constituting abuse of the police power of government.

8. Barrett further believes and, therefore, avers that evidence obtained from searches of his properties was obtained in violation of the Fourth Amendment to the United States Constitution and should be suppressed based on the following:

A. On April 12, 1999, Barrett objected to the Borough's discovery request for entry upon his properties for inspection. (A copy is attached as Exhibit E.)

B. On June 03, 1999, the Court of Common Pleas of Cumberland County at Civil No. 98-4145 issued an order which, *inter alia*, granted the Borough's request to search Barrett's properties under discovery proceedings. (A copy of the order is attached as Exhibit F.)

C. On June 14, 1999, Barrett filed in the United States District Court for the Middle District of Pennsylvania at Civil No. 1:CV-99-997, a Complaint, a Motion for Preliminary Injunction, and a Brief in Support of Motion for Preliminary Injunction. (Copies are attached as Exhibits G, H, and I.)

D. In the Federal Complaint, Barrett averred that the inspections ordered by the Court of Common Pleas constituted "searches" under the Fourth Amendment to the United States Constitution, were ordered without probable cause, and violated his right to be secure in his property against unreasonable searches. Barrett further averred that in requesting the inspections, the Borough established no probable cause for such action. Barrett requested the U.S. District Court vacate the June 03, 1999 discovery order of the Court of Common Pleas.

E. On June 27, 1999, the U.S. District Court dismissed the complaint for lack of jurisdiction. (A copy of the order is attached as Exhibit J.)

F. On June 21, 1999, prior to the time designated by the Court of Common Pleas to begin searches of Barrett's properties, Barrett filed a Notice of Appeal to the Pennsylvania Commonwealth Court of the June 03, 1999 Order of the Court of Common Pleas. Barrett averred that his appeal was an Interlocutory Appeal as of Right made under

Pa.R.A.P. 313, Collateral Orders. (A copy of the Notice of Appeal is attached as Exhibit K.)

G. On July 19, 1999, the Commonwealth Court of Pennsylvania quashed Barrett's appeal on grounds that it was interlocutory and not otherwise appealable. (A copy of the order is attached as Exhibit L.)

H. On July 07, 1999, the Court of Common Pleas committed Barrett to the Cumberland County Prison for refusing to allow the Borough to search his properties. (A copy of the order is attached as Exhibit M.)

I. On August 17, 1999, Barrett was released from Cumberland County Prison on the condition that he allow searches of his properties by the Borough. (A copy of the order is attached as Exhibit N.)

J. Searches of Barrett's properties were conducted on August 30 and 31, 1999 and on September 01 and 02, 1999 over Barrett's objections.

9. Magisterial District 09-2-01 issued search warrants in conjunction with the searches identified above. Barrett's personal residence at 136 East High Street and the property at 35 South Bedford Street, against which search warrants were issued, had no prior property maintenance violations.

10. Barrett avers that the search warrants failed to establish valid probable cause for the searches, and, thus, were illegal. (Copies of the search warrants are attached as Exhibits O, P, Q, and R.)

WHEREFORE, Appellant, Robert H. Barrett, prays your Honorable Court enter an Order vacating the condemnation orders of the Borough of Carlisle entered

October 26, 1999 and contained in Exhibits A, B, C, and D, attached hereto, and grant such further relief as may be appropriate.

Dated: December 10, 1999 By: _____

Robert H. Barrett
Appellant, *pro se*
136 East High Street
Carlisle, PA 17013

APPENDIX F

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE, Plaintiff

v.

ROBERT H. BARRETT, Defendant

ORDER OF COURT

AND NOW, this 7th day of July, 1999, I adjudicate you in civil contempt of court for violating this Court's inspection order of June 3, 1999. You are committed to the Cumberland County Prison until you purge yourself of contempt. You may purge yourself of contempt by advising me at any time that you will comply with the inspections as required by the order of June 3, 1999, and at that point I will then immediately set a new inspection schedule, and I will then have a sheriff take you to the first scheduled inspection, and if you comply with that inspection order, you may remain out of prison for as long as you continue to purge yourself of contempt by allowing all further inspections as scheduled. Defendant is to stand committed in civil contempt until the conditions of purge are met or he obtains a supersedeas from an Appellate Court.

By the Court,

Edgar B. Bayley, J.

APPENDIX G

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

PETITION TO VACATE AN ORDER OF COURT

NOW COMES Defendant, Robert H. Barrett (herein, "Barrett"), a *pro se* litigant, and requests your Honorable Court vacate the June 03, 1999 Order of Court in this action. In support thereof, Barrett avers the following:

1. Barrett is the owner of eleven (11) parcels of real estate situated within the Borough of Carlisle (herein, "the Borough"), Cumberland County, Pennsylvania. Eight (8) of the eleven (11) properties are improved with buildings.

2. The parcels of real estate are situated in what is known as the Carlisle Historic Preservation District (herein, "the Historic District").

3. On July 09, 1998, Barrett filed a lawsuit in the U.S. District Court for the Middle District of Pennsylvania at Civil No. 4:CV-98-1109 challenging the certification of the Historic District. The Federal Complaint is pending in U.S. District Court.

4. On July 22, 1998, in retaliation, the Borough filed the present lawsuit requesting that the Court appoint an agent to manage Barrett's eleven (11) properties within the Historic District.

5. On June 03, 1999 the Court issued an Order authorizing the Borough to search Barrett's eight (8) improved properties **without probable cause**, in violation of the Fourth Amendment to the United States Constitution. A copy of the Order is attached as Exhibit A.

6. The searches authorized by the June 03, 1999 Order are scheduled to commence on June 21, 1999 and continue through June 24, 1999.

7. The entry upon Barrett's properties authorized by the June 03, 1999 Order is "for the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures for code violations."

8. The "inspections" authorized by the June 03, 1999 Order are broad, unrestricted intrusions upon Barrett's properties and constitute "searches" under the Fourth Amendment to the United States Constitution.

9. Barrett avers that a separate search warrant is required for each property which sets forth the probable cause for the search, the nature of the evidence sought, and limiting conditions of the search.

10. The June 03, 1999 Order failed to identify the "code" against which the Borough is authorized to conduct its searches for violations.

11. The June 03, 1999 Order failed to state any

finding of probable cause against Barrett's properties collectively upon which to base searches of Barrett's properties.

12. The June 03, 1999 Order failed to state any finding of probable cause against Barrett's individual properties upon which to base a search of any individual property.

13. One (1) of the eight (8) properties to be searched is Barrett's personal residence at 136 East High Street, Carlisle.

14. The June 03, 1999 Order failed to state any finding of probable cause against Barrett's personal residence at 136 East High Street upon which to base a search of that property.

15. On the eight (8) properties authorized for search by the June 03, 1999 Order, four (4) have never been found in violation of any property maintenance code.

16. Of the eight (8) properties authorized for search by the June 03, 1999 Order, two (2) were cited for minor violations involving porch railings. One (1) of these properties is occupied, while the other is vacant. In both cases, access to the porches has been blocked, thereby eliminating any public safety hazard.

17. Of the eight (8) properties authorized for search by the June 03, 1999 Order, Barrett has been attempting to demolish three (3) of the buildings since February 1996, but has been prevented from doing so by the Borough.

18. And finally, of the eight (8) properties authorized for search by the June 03, 1999 Order, one is an old garage

condemned by the Borough as "likely" to collapse and repeatedly cited, in spite of the fact that (1) the building was never in danger of collapse, (2) no one has ever been hurt by the condition of the building, and (3) Barrett has invested tens of thousands of dollars in repairing the building, in spite of the Borough's repeated denial of building permits.

19. On June 01, 1999, the Cumberland County Court of Common Pleas heard on-record argument on the Borough's motion to compel compliance with their discovery requests, including the Borough's request for entry upon Barrett's properties.

20. Barrett has requested preparation of a transcript of the June 01, 1999 on-record argument.

21. At the June 01, 1999 on-record argument, the Borough presented no statement of facts or evidence against Barrett's properties to establish probable cause for general entry upon all eight (8) of Barrett's improved properties.

22. At the June 01, 1999 on-record argument, the Borough presented no argument for entry upon any individual property owned by Barrett and established no probable cause for such action.

23. At the June 01, 1999 on-record argument, the Borough presented no argument for entry upon Barrett's personal residence at 136 East High Street and established no probable cause for such action.

24. The Court violated the Fourth Amendment to the United States Constitution by authorizing the Borough to search Barrett's eight (8) improved properties without probable cause.

25. The Court violated the Fourth Amendment to the United States Constitution by authorizing a general, unrestricted search of Barrett's eight (8) improved properties.

AND FURTHER:

26. The June 03, 1999 Order overruled Barrett's objection to Interrogatory 5 which required insurance policy information on each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

27. The June 03, 1999 Order overruled Barrett's objection to Interrogatory 14 which required information on the purchase price, current debt, monthly payments, names of occupants, reason structure is not occupied, and amounts spent on maintenance on each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

28. The June 03, 1999 Order overruled Barrett's objection to Interrogatory 15 which required information on maintenance, repairs, improvements, betterment or demolition, and on whether building permits were applied for and issued for each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

29. The June 03, 1999 Order overruled Barrett's objection to Production Request 6 which required all rental records, inclusive of income and expense statements for each of Barrett's properties. The Court has failed to identify the

relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

30. The June 03, 1999 Order overruled Barrett's objection to Production Request 7 which required all records reflecting income, of any nature, and expenses for each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

31. The June 03, 1999 Order overruled Barrett's objection to Production Request 11 which required copies of the declaration pages of each insurance policy applicable to each of Barrett's properties. The Court has failed to identify the relevance of this information to any law or regulation governing the maintenance of Barrett's properties.

WHEREFORE, Defendant, Robert H. Barrett, prays the Court issue an Order to Vacate an Order of Court issued June 03, 1999 in the present lawsuit, based on failure by Plaintiff, Borough of Carlisle, (1) to establish probable cause for entry upon Barrett's eight (8) improved properties, and (2) to establish the relevance of Interrogatories 5, 14, and 15 and of Production Requests 6, 7, and 11 to any law or regulation governing the maintenance of Barrett's properties.

Dated: June 14, 1999 By: _____

Robert H. Barrett
Defendant, *pro se*
134 East High Street
Carlisle, PA 17013

APPENDIX H

IN THE COURT OF COMMON PLEAS OF
CUMBERLAND COUNTY, PENNSYLVANIA

No. 98-4145 Equity Term

BOROUGH OF CARLISLE,
Plaintiff

v.

ROBERT H. BARRETT,
Defendant

OPINION IN SUPPORT OF ORDER DATED JUNE 3, 1999

Bayley, J., June 23, 1999:

On July 22, 1998, plaintiff, the Borough of Carlisle, instituted this equity action against defendant Robert H. Barrett. Based on a litany of alleged continuing Borough Code violations by Barrett who is the owner of eleven properties in the historic district of Carlisle, the Borough sought the following equitable relief:[1]

> A. **That an agent be appointed to manage Barrett's eleven properties within the historic district in order to bring the properties into compliance with the code and historic district**

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[1] The alleged violations and the extensive enforcement history are in detail averred in the Borough's seventy-three paragraph complaint.

regulations; and

B. That an injunction issue against Barrett prohibiting him from performing any repairs or alterations to any of his properties without first receiving certificates of appropriateness and building permits for such work; and

C. That the Borough be awarded its reasonable attorneys fees in this action, and all previous actions, between the parties; and

D. Such other equitable relief as the Court deems appropriate under the circumstances. (Emphasis added.)

Barrett filed preliminary objections to the complaint which were dismissed on February 9, 1999. This court was satisfied that plaintiff, pursuant to the **Borough of Kennet Square v. Lal**, 165 Pa. Commw. 573 (1994), has stated a complaint upon which a trial should be had on its claims for relief.

The Borough of Carlisle sought discovery in the form of answers to interrogatories and a motion to compel the production of documents. It also made a request to inspect the eight improved properties subject to this dispute. Defendant refused to allow the inspection of the properties and disputed much of the discovery requested. On June 3, 1999, following a hearing on plaintiff's motion to compel compliance with its requests, the following order was entered:

I. OBJECTIONS OF DEFENDANT TO PLAINTIFF'S INTERROGATORIES

1. Interrogatory No. 1. The objection **IS SUSTAINED** because the information sought is not relevant.

2. Interrogatory No. 2. The objection **IS SUSTAINED** except that defendant shall state his annual salary and any other income for the years 1996, 1997, 1998 and 1999 to date.

3. Interrogatory No. 5. The objection **IS OVERRULED**. Defendant shall answer this interrogatory in its entirety.

4. Interrogatory No. 7. Because defendant has identified only himself as an expert who will be called to testify, and he has answered the interrogatory with respect to himself, the objection **IS SUSTAINED**.

5. Interrogatory No. 10. The objection **IS SUSTAINED** because the information sought is not relevant.

6. Interrogatory No. 14. The objection **IS OVERRULED**. Defendant shall answer this interrogatory in its entirety.

7. Interrogatory No. 15. The objection **IS OVERRULED**. Defendant shall answer this interrogatory in its entirety.

8. Interrogatory No. 16. The objection **IS SUSTAINED** as the information sought is not relevant.

9. Interrogatory No. 17. The objection **IS SUSTAINED** as the information sought is not relevant.

10. All interrogatories that defendant is ordered to answer as set forth above shall be answered within twenty (20) days of this date.

II. PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO COMPLY WITH PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

1. Request No. 2. **IS DISMISSED** as overbroad.

2. Request No. 6. The motion **IS GRANTED**. Defendant shall provide plaintiff with such documents.

3. Request No. 7. The motion **IS GRANTED**. Defendant shall provide plaintiff with such documents.

4. Request No. 8. **IS DISMISSED** as not relevant.

5. Request No. 9. **IS DISMISSED** as defendant was issued any such permits by plaintiff who has knowledge of them.

6. Request No. 10. **IS DISMISSED** as overbroad.

7. Request No. 11. The motion **IS GRANTED**. Defendant shall provide such documents to plaintiff.

8. All documents that defendant is ordered to produce as set forth above shall be produced within twenty (20) days of this date.

III. REQUEST FOR INSPECTION OF IMPROVED PROPERTIES OF DEFENDANT AT 25 NORTH BEDFORD STREET, 35 SOUTH BEDFORD STREET, 37 SOUTH BEDFORD STREET, 122 EAST LIBERTY AVENUE, 134 EAST HIGH STREET, 136 EAST HIGH STREET, 138 EAST HIGH STREET, AND 29 SOUTH EAST STREET

1. The request for the inspection of the aforesaid improved properties, which is opposed by defendant, **IS GRANTED**.

2. A group of up to six people may enter said properties, those people being one borough representative, the borough solicitor, a photographer who may be a borough representative, a real estate appraiser, a structural engineer and a contractor.

3. The entry of each property shall be for the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures and for code violations.

4. Each inspection may last for up to three hours.

5. The inspection schedule shall be as follows:

a. The inspection of 25 North Bedford Street shall commence at 9:00 a.m., Monday, June 21, 1999.

b. The inspection of 35 South Bedford Street shall commence at 1:00 p.m., Monday, June 21, 1999.

c. The inspection of 37 South Bedford Street shall commence at 9:00 a.m., Tuesday, June 22, 1999.

d. The inspection of 122 East Liberty Avenue

shall commence at 1:00 p.m., Tuesday, June 22, 1999.

e. The inspection of 134 East High Street shall commence at 9:00 a.m., Wednesday, June 23, 1999.

f. The inspection of 136 East High Street shall commence at 1:00 p.m., Wednesday, June 23, 1999.

g. The inspection of 138 East High Street shall commence at 9:00 a.m., Thursday, June 24, 1999.

h. The inspection of 29 South East Street shall commence at 1:00 p.m., Thursday, June 24, 1999.

6. Defendant shall provide complete access to these properties by the inspectors and shall not interfere with said inspections.

7. This inspection schedule may only be altered upon agreement of both parties for their convenience.

On June 21, 1999, defendant filed an appeal to the Commonwealth Court of Pennsylvania, from the interlocutory order of June 3, 1999, complaining that the order allows "Plaintiff, Borough of Carlisle to search eight (8) of Defendant's improved properties without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the things to be seized." Besides being an improper appeal from an interlocutory order[2] the order does not provide, as defendant maintains, for an illegal search of defendant's property or the seizure of anything. To the contrary, the order specifically

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[2] Interlocutory orders are not appealable as of right as they can only be appealed by permission. Pa. Rule of Appellate Procedure 1311; **Department of Transportation v. Lakeview Motel, Inc.**, 81 Pa. Commw. 262 (1984).

limits the entry of plaintiff's agents into defendant's property:

> [f]or the purpose of inspecting, measuring, photographing, videotaping, testing, sampling, or analyzing the said properties and all fixtures for code violations.[3]

The order was entered pursuant to Pa. Rules of Civil Procedure 4009.31 and 4009.32 that provide:

> **RULE 4009.31 ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES. GENERAL PROVISIONS**
>
> Any party may serve a request upon a party pursuant to Rule 4009.32 . . . to permit entry upon designated property in the possession or control of the party or person upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rules 4003.1 through 4003.6 inclusive.
>
> **RULE 4009.32 REQUEST FOR ENTRY UPON PROPERTY OF A PARTY**

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[3] The Borough has filed a motion to hold Barrett in contempt of the order for failing to allow entry for the scheduled inspections at 25 North Bedford Street and 35 South Bedford Street on June 21, 1999. A Rule to show cause was issued with a hearing set for July 7, 1999. The effect of even a proper petition to file an interlocutory appeal pursuant to Pa. Rule of Appellant Procedure 1311 is not to stay the proceedings in the trial court unless it is so ordered by that court or the Appellate Court. Pa. Rule of Appellate Procedure 1313

(a) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the original process upon that party. The request shall describe with reasonable particularity the property to be entered and the activities to be performed.

The conditions of the subject improved properties are relevant and admissible, and therefore within the scope of Pa. Rule of Civil Procedure 4003.1(a) and (b), and go to the heart of plaintiff's claim for equitable relief. Defendant apparently thinks that this is a criminal rather than a civil case.

June 23, 1999

Edgar B. Bayley

APPENDIX I

Constitutional and Statutory Provisions Involved in the Case

1. The Fourth Amendment to the United States Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. The Fifth Amendment to the United States Constitution, which provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Fourteenth Amendment to the United States Constitution, Section 1,which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. Title 28, United States Code, Section 1257(a) (State courts of appeals; certiorari), which provides:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

5. Title 42, United States Code, Section 1983 (Civil action for deprivation of rights), which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

6. 2 Pa.C.S. § 752, which provides:

> Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to Title 42 (relating to judiciary and judicial procedure.).

Supreme Court, U.S.
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No. 00-1369

In The

Supreme Court of the United States

ROBERT H. BARRETT,

Petitioner,

v.

BOROUGH OF CARLISLE,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

SHOULD THIS COURT DENY THE PETITION FOR CERTIORARI WHERE PETITIONER HAS FAILED TO RAISE HIS CLAIMS IN AVAILABLE ADMINISTRATIVE PROCEEDINGS, THEREBY DEPRIVING PENNSYLVANIA STATE COURTS AND THIS COURT OF JURISDICTION?

Suggested Answer: In the Affirmative.

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REASONS FOR DENYING THE WRIT

The petition does not meet the jurisdictional requirements mandated by 28 U.S.C. § 1257 and well-settled Pennsylvania case law. Petitioner attempts to raise four constitutional questions related to the issuance of four condemnation orders against his properties for code violations. He failed/refused to initially appear and raise those issues before the local agency charged with hearing appeals of the orders. As a result, Pennsylvania courts did not have jurisdiction to hear his claims and he failed to preserve them for appellate review. Similarly, this Court lacks jurisdiction to review his claims. Notwithstanding, the Petition does not present any compelling federal or constitutional issues. His Petition should be denied.

COUNTERSTATEMENT OF THE CASE

On October 16, 1999, the Code Department of the Borough of Carlisle (herein, the "Borough") issued orders condemning four properties owned by Robert H. Barrett (herein, "Barrett").[1] The orders prohibited the use and occupancy of the buildings because of deficiencies under the Borough's Property Maintenance Code. As required by the Code, the orders clearly notified Barrett of his right of appeal within ten (10) days to the Board of Appeals.[2] Instead, on December 13, 1999, Petitioner

[1] The orders were served on Barrett on October 28, 1999.

[2] The Board of Appeals was created by the Borough under the Pennsylvania Local Agency Law, 2 Pa.C.S. § 751, *et seq.*, and is an administrative body having initial adjudicatory authority.

bypassed the administrative agency procedure and filed a direct appeal to the trial court. His appeal was untimely, both as to the ten-day administrative agency appeal period and the thirty day judicial appeal period.[3] The trial court quashed the appeal for lack of jurisdiction and its Order was affirmed by an unreported opinion of the Commonwealth Court of Pennsylvania, an intermediate appellate court.[4] When the Supreme Court of Pennsylvania denied discretionary review of his case, Barrett appealed to this Court.[5]

ARGUMENT

Rule 10 of the Rules of the Supreme Court of the United States indicates, in pertinent part, as follows:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> . . .
>
> (c) a state court . . . has decided an important question of federal law that has not been, but should be settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

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[3] *See*, 42 Pa.C.S. § 5571(B).

[4] *See*, Petitioner's Appendix B.

[5] *See*, Petitioner's Appendix A.

Barrett's Statement of the Case repeats, in large part, the same inaccurate averments of fact as contained in his appeal to this Court docketed to No. 00-1292. Not coincidentally, his first three Questions Presented and the corresponding portions of his argument repeat *verbatim* matters raised in that appeal.[6] Again, he miscategorizes this case as one premised under the umbrella of 42 U.S.C. § 1983. It is not. This is a case brought under the Pennsylvania Local Agency Law, 2 Pa.C.S. § 751, *et seq.*, as a result of property code orders issued by a municipality.

This Court should deny the Petition for Certiorari because the petitioner has failed to raise his claims in available administrative proceedings, thereby depriving Pennsylvania state courts and this Court of jurisdiction.

This case is strictly a matter of state law which presents no question warranting review by this Court. It has been long-settled in Pennsylvania that aggrieved persons must fully exhaust their administrative remedies, before seeking judicial redress. *Campbell v. Department of Labor and Industry*, 471 A.2d 1331 (Pa. Commw. 1984). The principle is so rooted in the promotion of judicial economy, that it goes to the fundamental ability of any court to exercise judicial review. Barrett never filed an appeal with the Board of Appeals.[7] Instead, he filed an untimely

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[6] *See*, Response to Petition for Writ of Certiorari filed by the Borough at No. 00-1292 for additional reasons for denial of this Petition.

[7] Chapter 5, Section 5.7 of the Code of the Borough of Carlisle, provides:

> Any person aggrieved by a decision of any borough official or body who or which is responsible

appeal with the state trial court. He failed to exhaust his administrative appeals, thereby leaving the trial court without jurisdiction to consider the underlying merits, if any, of his claims.

Notwithstanding, Barrett compounded the jurisdictional infirmity by failing to appeal to the trial court within the thirty-day time period set forth in the Pennsylvania Judicial Code, 42 Pa.C.S. § 5571(B). Even if his failure to exhaust administrative remedies was not jurisdictional, he compounded his error by filing an untimely appeal to the trial court. Thus, it lacked jurisdiction in any event.

Barrett may not now raise issues relating to the underlying merits of his appeal, when he failed to preserve them by complying with fundamental jurisdictional requirements. On the facts of this case, there is no federal or constitutional question properly preserved for judicial review.

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for the enforcement of the code or ordinances which are the subject of this chapter shall file a written notice of appeal with the Board of Appeals within ten (10) days after the rendering of such decision. The Board of Appeals is a local agency ordained by the Borough of Carlisle to hear appeals of the Borough determinations and to hold hearings under Pennsylvania Local Agency Law. 2 Pa.C.S. § 101 *et seq.*

CONCLUSION

This case solely involves jurisdictional principles of state law. Barrett failed to preserve judicial review of the merits of any underlying issues, including constitutional claims, and they are not properly before the court. Respondent Borough of Carlisle prays that this Honorable Court will deny Barrett's Petition for Writ of Certiorari.

Respectfully submitted,

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